

2003 DRAFTING REQUEST

Bill

Received: **07/30/2003**

Received By: **smiller**

Wanted: **Soon**

Identical to LRB:

For: **Thomas Reynolds (608) 266-2512**

By/Representing: **adam peer**

This file may be shown to any legislator: **NO**

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Reynolds@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Civil liability exemption for the food industry against claims stemming from weight gain or obesity

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mlief 07/30/2003	wjackson 07/30/2003	jfrantze 07/31/2003	_____	sbasford 07/31/2003		
/2	mlief 08/28/2003	wjackson 08/29/2003 jdyer	rschluet 08/29/2003	_____	mbarman 08/29/2003		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

08/29/2003

/3

rschluet
08/29/2003

lemery
08/29/2003

mbarman
10/16/2003

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **07/30/2003**

Received By: **smiller**

Wanted: **Soon**

Identical to LRB:

For: **Thomas Reynolds (608) 266-2512**

By/Representing: **adam peer**

This file may be shown to any legislator: **NO**

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Reynolds@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Civil liability exemption for the food industry against claims stemming from weight gain or obesity

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mlief 07/30/2003	wjackson 07/30/2003	jfrantze 07/31/2003	_____	sbasford 07/31/2003		
/2	mlief 08/28/2003	wjackson 08/29/2003 jdye	rschluet 08/29/2003	_____	mbarman 08/29/2003		

*For
Senate
per
Tom*

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

08/29/2003

/3

rschluet

lemery

08/29/2003

08/29/2003

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **07/30/2003**

Received By: **smiller**

Wanted: **Soon**

Identical to LRB:

For: **Thomas Reynolds (608) 266-2512**

By/Representing: **adam peer**

This file may be shown to any legislator: **NO**

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Reynolds@legis.state.wi.us** ✓

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Civil liability exemption for the food industry against claims stemming from weight gain or obesity

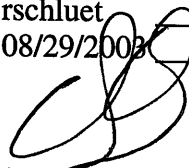
Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mlief 07/30/2003	wjackson 07/30/2003	jfrantze 07/31/2003	_____	sbasford 07/31/2003		
/2	mlief 08/28/2003	wjackson 08/29/2003	rschluet 08/29/2003	_____	mbarman 08/29/2003		

138/ajld


8-29-03

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **07/30/2003**

Received By: **smiller**

Wanted: **Soon**

Identical to LRB:

For: **Thomas Reynolds (608) 266-2512**

By/Representing: **adam peer**

This file may be shown to any legislator: **NO**

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Reynolds@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Civil liability exemption for the food industry against claims stemming from weight gain or obesity

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?							
/1	mlief 07/30/2003	wjackson 07/30/2003	jfrantze 07/31/2003		sbasford 07/31/2003		

12 WLJ 8/29

[Handwritten signatures and initials]

8 <END>

FE Sent For:

2003 DRAFTING REQUEST

Bill

Received: 07/30/2003

Received By: **smiller**

Wanted: **Soon**

Identical to LRB:

For: **Thomas Reynolds (608) 266-2512**

By/Representing: **adam peer**

This file may be shown to any legislator: **NO**

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Reynolds@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Civil liability exemption for the food industry against claims stemming from weight gain or obesity

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mlief		7/31	7/31			

FE Sent For:

<END>

From the desk of:

Adam Peer

Steve,

This is a mark.

Thanks!

AP

Office of State Senator Tom Reynolds · 5th Senate District
State Capitol · P.O. Box 7882 · Madison, WI 53707
Office: (608) 266-2512 · Toll Free: (866) 817-6061 · Fax: (608) 267-0367



STAFF MEMORANDUM
OFFICE OF WISCONSIN
STATE SENATOR TOM REYNOLDS

To: Chief Steve Miller, Legislative Reference Bureau

From: Adam Peer, Senior Policy Advisor

Date: July 28, 2003

**RE: Drafting Instructions: A Bill to Prohibit Civil Liability Actions Against Food Industry
for Claims of Injury Resulting from Obesity**

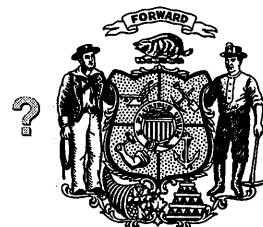
On behalf of Senator Reynolds, I am requesting that a bill be drafted that does all of the following:

1. Incorporates, in good form, the intent of 2003 US Senate Bill 1428.

It is the Senator's intent to generally prohibit civil liability from being brought or continued against members of the food industry or those associated with the food industry for injury claims or court orders resulting from a person's weight gain, obesity, or any health condition related to weight gain or obesity.

I will be the primary policy advisor on this legislation. Please treat this request confidentially until directed otherwise. If you have any questions, please feel free to contact me. Thank you in advance for your services.

ASP



Digitally
signed by
Adam S.
Peer
Date:
2003.07.28
11:09:57
-05'00'
Reason: I
am the
author of this
document
Location:
State Capitol

108TH CONGRESS
1ST SESSION

S. 1428

To prohibit civil liability actions from being brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for damages or injunctive relief for claims of injury resulting from a person's weight gain, obesity, or any health condition related to weight gain or obesity.

IN THE SENATE OF THE UNITED STATES

JULY 17, 2003

Mr. MCCONNELL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit civil liability actions from being brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for damages or injunctive relief for claims of injury resulting from a person's weight gain, obesity, or any health condition related to weight gain or obesity.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Commonsense Con-
5 sumption Act of 2003".

1 **SEC. 2. PROHIBITION ON BRINGING OF QUALIFIED CIVIL**
2 **LIABILITY ACTIONS IN FEDERAL OR STATE**
3 **COURT.**

4 (a) **IN GENERAL.**—A qualified civil liability action
5 may not be brought in any Federal or State court.

6 (b) **DISMISSAL OF PENDING ACTIONS.**—A qualified
7 civil liability action that is pending on the date of the en-
8 actment of this Act shall be dismissed immediately by the
9 court in which the action was brought or is currently pend-
10 ing.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) **ENGAGED IN THE BUSINESS.**—The term
14 “engaged in the business” means a person who man-
15 ufactures, markets, distributes, advertises, or sells a
16 qualified product in the person’s regular course of
17 trade or business.

18 (2) **MANUFACTURER.**—The term “manufac-
19 turer” means, with respect to a qualified product, a
20 person who is lawfully engaged in the business of
21 manufacturing the product in interstate or foreign
22 commerce.

23 (3) **PERSON.**—The term “person” means any
24 individual, corporation, company, association, firm,
25 partnership, society, joint stock company, or any
26 other entity, including any governmental entity.

1 (4) QUALIFIED PRODUCT.—The term “qualified
2 product” means a food (as defined in section 201(f)
3 of the Federal Food Drug and Cosmetic Act (21
4 U.S.C. 321(f)).

5 (5) QUALIFIED CIVIL LIABILITY ACTION.—The
6 term “qualified civil liability action” means a civil
7 action brought by any person against a manufac-
8 turer or seller of a qualified product, or a trade as-
9 sociation, for damages or injunctive relief based on
10 a claim of injury resulting from a person’s weight
11 gain, obesity, or any health condition that is related
12 to weight gain or obesity, but shall not include—

13 (A) an action in which a manufacturer or
14 seller of a qualified product knowingly and will-
15 fully violated a Federal or State statute applica-
16 ble to the manufacturing, marketing, distribu-
17 tion, advertisement, labeling, or sale of the
18 product, and the violation was a proximate
19 cause of the claim of injury resulting from a
20 person’s weight gain, obesity, or health condi-
21 tion related to weight gain or obesity;

22 (B) an action for breach of contract or ex-
23 press warranty in connection with the purchase
24 of a qualified product; or

1 (C) an action regarding the sale of a quali-
2 fied product which is adulterated (as described
3 in section 402 of the Federal Food, Drug, and
4 Cosmetic Act (21 U.S.C. 342)).

5 (6) SELLER.—The term “seller” means, with
6 respect to a qualified product, a person lawfully en-
7 gaged in the business of marketing, distributing, ad-
8 vertising, or selling a qualified product in interstate
9 or foreign commerce.

10 (7) STATE.—The term “State” includes each of
11 the several States of the United States, the District
12 of Columbia, the Commonwealth of Puerto Rico, the
13 Virgin Islands, Guam, American Samoa, and the
14 Commonwealth of the Northern Mariana Islands,
15 and any other territory or possession of the United
16 States, and any political subdivision of any such
17 place.

18 (8) TRADE ASSOCIATION.—The term “trade as-
19 sociation” means any association or business organi-
20 zation (whether or not incorporated under Federal
21 or State law) that is not operated for profit, and 2
22 or more members of which are manufacturers, mar-
23 keters, distributors, advertisers, or sellers of a quali-
24 fied product.

○



2003 BILL

due
Thursday,
July 31

GEN

1 AN ACT ...; relating to: civil liability exemption for claims resulting from weight
2 gain and obesity.

Analysis by the Legislative Reference Bureau

This bill provides a civil liability exemption for food manufacturers, marketers, advertisers, distributors and sellers for claims resulting from a person's weight gain or obesity or health condition related to weight gain or obesity caused by the consumption of food.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 895.506 of the statutes is created to read:

4 **895.506 Liability exemption; weight gain and obesity claims.** (1) Any
5 person who manufactures, markets, distributes, advertises, or sells food, as defined
6 in 21 USC 321 (f), is immune from civil liability for a person's weight gain or obesity
7 caused by the consumption of the food, or for ~~any~~^a health condition ~~related~~^{related}
8 ~~to weight gain or obesity~~
~~by the consumption of the food.~~

BILL

1 (2) Subsection (1) does not apply to any of the following:

2 (a) A claim that a defendant under sub. (1) knowingly violated a federal or state

3 law concerning the manufacturing, marketing, distribution, advertisement, labelling,

4 or sale of the food, and the violation was the proximate cause of the ~~injury~~

Weight gain, obesity, or related health conditions

5 (b) A claim for breach of contract or express warranty in connection with the

6 purchase of the food.

7 (c) A claim regarding the sale of food that is adulterated under 21 USC 342.

8 **SECTION 2. Initial applicability.**

9 (1) This act first applies to actions pending on the effective date of this

10 subsection.

11 (END)



STAFF MEMORANDUM
OFFICE OF WISCONSIN
STATE SENATOR TOM REYNOLDS

To: Chief Steve Miller, Legislative Reference Bureau

From: Adam Peer, Senior Policy Advisor

Date: August 27, 2003

RE: Revised Drafting Instructions: LRB 3039 Civil liability exemption for claims resulting from weight gain and obesity

On behalf of Senator Reynolds, I am requesting that LRB 3039 be revised to also do the following:

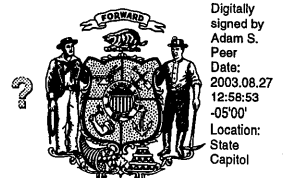
1. That in legal actions brought against persons in the food industry, legal costs may be awarded to the defendant after discovery if the evidence produced is found to be baseless and are dismissed.
2. Food packers be included in the list of immune persons.

As you may know, considerable expense may be incurred by a defendant in the discovery process. It is reasonable that under this bill a legal action brought would include a violation of law to avoid being dismissed by reason of immunity. The Senator believes that by requiring the plaintiff to bear the risk of the defendant's legal costs if their allegations are found to be without merit will discourage baseless legal actions against persons in the food industry.

I will be the primary policy advisor on this legislation. Please treat this request confidentially until directed otherwise. If you have any questions, please feel free to contact me. Thank you in advance for your services.

ASP

814.04
802.04
895.77



Lief, Madelon

From: Peer, Adam
Sent: Wednesday, August 27, 2003 1:40 PM
To: Lief, Madelon
Subject: RE: LRB 3039/1 Revised Drafting

Lonnie,

The intent for the legal costs would be for the "knowingly violating state or federal law" only.

Also, your assumption on awarding costs is correct.

Thanks,

Adam

-----Original Message-----

From: Lief, Madelon
Sent: Wednesday, August 27, 2003 1:34 PM
To: Peer, Adam
Subject: RE: LRB 3039/1 Revised Drafting Instructions

Adam-- These instructions are fairly clear, but do the lobbyists really want the legal costs provision to apply to any case brought against the food industry? I thought this was simply supposed to apply to a claim that the defendant knowingly violated a state or federal law. Also, I am assuming that by awarding costs if the "evidence" is dismissed as "baseless" what you mean is that the court dismisses the claim on a summary judgment motion (that is, before trial). Is that the case?

Lonnie

-----Original Message-----

From: Peer, Adam
Sent: Wednesday, August 27, 2003 1:02 PM
To: Miller, Steve
Cc: Lief, Madelon
Subject: LRB 3039/1 Revised Drafting Instructions
Importance: High

Please let me know if you have any questions.

Adam

ADAM S. PEER
Senior Policy Advisor
Office of Senator Tom Reynolds

State of Wisconsin, USA

State Capitol
Office: 608.266.2512
Fax: 608.267.0367

08/27/2003

Email: Adam.Peer@legis.state.wi.us



2003 BILL

RMR

SOON

INS ANALYSIS

REGEN

1 AN ACT to create 895.506 of the statutes; relating to: civil liability exemption
2 for claims resulting from weight gain and obesity.

Analysis by the Legislative Reference Bureau

This bill provides a civil liability exemption for food manufacturers, marketers, advertisers, distributors, and sellers for claims resulting from a person's weight gain or obesity or health condition related to weight gain or obesity caused by the consumption of food.

packers

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INS 1-3

3

SECTION 895.506 of the statutes is created to read:

4

895.506 Liability exemption; weight gain and obesity claims. (1) Any

5

person who manufactures, markets, distributes, advertises, or sells food, as defined

6

in 21 USC 321 (f), is immune from civil liability for a person's weight gain or obesity

7

caused by the consumption of the food, or for a health condition related to weight gain

8

or obesity.

packers

§ The bill also provides an exception to this immunity if the claim involves a ^{knowing} violation of a state or federal law concerning the food, a breach of contract or express warranty in connection with the purchase of the food, or a claim that the food is adulterated under federal law. ^{- Finally,} ~~Under the bill~~ ^{prevailing} a party on a summary judgment motion concerning one of these claims may recover [↑] in addition to the recovered [↑] attorney fees ^{of not more than \$100} recoverable under current law, ~~also~~ recover reasonable attorney fees and the costs of the investigation and litigation. ©

INS 1-3

Section #. 814.04 (intro.) of the statutes is amended to read:

895.506

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1971 c. 141; Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110 s. 60 (13); 1979 c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295; 1993 a. 98, 326, 486, 490, 491; 1995 a. 24, 27, 133, 149, 262, 417; 1997 a. 55, 164, 254; 1999 a. 32, 82, 122, 190; 2001 a. 6, 16.

BILL

1 (2) Subsection (1) does not apply to any of the following:

2 (a) A claim that a defendant under sub. (1) knowingly violated a federal or state
3 law concerning the manufacturing, marketing, distribution, advertisement,
4 labeling, or sale of the food, and the violation was the proximate cause of the weight
5 gain, obesity, or related health condition.

6 (b) A claim for breach of contract or express warranty in connection with the
7 purchase of the food.

8 (c) A claim regarding the sale of food that is adulterated under 21 USC 342.

SECTION 2. Initial applicability.

10 (1) This act first applies to actions pending on the effective date of this
11 subsection.

12

(END)

INS
2-8-9

INS 2-8

§ (3) In addition to the costs allowed under s 814004,^v
= a party that prevails on a motion under
s 802008^v filed in an action under sub (2)^v
may recover reasonable attorney fees and the costs
of the investigation and litigation.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3039/2 3
MJL:wjl:rs
↑ stays

2003 BILL

RIM ~~RE~~ NOT run
SUN

defendant

Regen

1 AN ACT to amend 814.04 (intro.); and to create 895.506 of the statutes; relating
2 to: civil liability exemption for claims resulting from weight gain and obesity.

Analysis by the Legislative Reference Bureau

X This bill provides a civil liability exemption for food manufacturers, marketers, packers, advertisers, distributors, and sellers for claims resulting from a person's weight gain or obesity or health condition related to weight gain or obesity caused by the consumption of food. The bill also provides an exception to this immunity if the claim involves a knowing violation of a state or federal law concerning the food, a breach of contract or express warranty in connection with the purchase of the food, or a claim that the food is adulterated under federal law. Finally, a prevailing party on a summary judgment motion concerning one of these claims may, in addition to the attorney fees of not more than \$100 recoverable under current law, recover reasonable attorney fees and the costs of the investigation and litigation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 814.04 (intro.) of the statutes is amended to read:
4 814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.30 (5m),
5 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, 814.025,

BILL

1 814.245, 895.035 (4), 895.10 (3), 895.506, 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3),
2 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as
3 follows:

4 **SECTION 2.** 895.506 of the statutes is created to read:

5 **895.506 Liability exemption; weight gain and obesity claims.** (1) Any
6 person who manufactures, markets, packs, distributes, advertises, or sells food, as
7 defined in 21 USC 321 (f), is immune from civil liability for a person's weight gain
8 or obesity caused by the consumption of the food, or for a health condition related to
9 weight gain or obesity.

10 (2) Subsection (1) does not apply to any of the following:

11 (a) A claim that a defendant under sub. (1) knowingly violated a federal or state
12 law concerning the manufacturing, marketing, distribution, advertisement,
13 labeling, or sale of the food, and the violation was the proximate cause of the weight
14 gain, obesity, or related health condition.

15 (b) A claim for breach of contract or express warranty in connection with the
16 purchase of the food.

17 (c) A claim regarding the sale of food that is adulterated under 21 USC 342.

18 (3) In addition to the costs allowed under s. 814.04, a ~~party~~^{defendant} that prevails on a
19 motion under s. 802.08 filed in an action under sub. (2) may recover reasonable
20 attorney fees and the costs of the investigation and litigation.

21 **SECTION 3. Initial applicability.**

22 (1) This act first applies to actions pending on the effective date of this
23 subsection.

24 (END)